

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EVELINA CALCANO, *on behalf of herself
and all other persons similarly situated,*

Plaintiff,

-against-

TUMI, INC.,

Defendant.

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1:19-cv-11435 (MKV)

ORDER OF DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

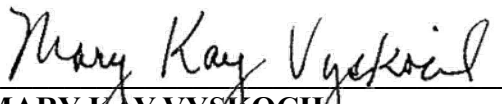
Plaintiff Evelina Calcano filed this action against Defendant Tumi, Inc., asserting claims under the Americans with Disabilities Act, the New York State Human Rights Law, and the New York City Human Rights Law [ECF No. 1, 15]. Calcano and other visually impaired plaintiffs filed a number of substantially identical actions against stores and restaurants for failing to carry braille gift cards. *See Calcano v. Swarovski N. Am. Ltd.*, No. 20-1552, 2022 WL 1788305, at *1 (2d Cir. June 2, 2022); *see also Dominguez v. Pizza Hut of Am., LLC*, No. 19-cv-10175 (MKV), 2020 WL 3639977, at *4 (S.D.N.Y. July 6, 2020) (dismissing for lack of standing). Tumi filed a motion to dismiss this case for lack of standing [ECF No. 16, 17, 19]. At the parties' request, the Court administratively terminated the motion and stayed this case pending the resolution of an appeal arising from the dismissals of five similar cases [ECF No. 21, 22].

On June 2, 2022, the Second Circuit affirmed those dismissals in *Calcano v. Swarovski N. Am. Ltd.*, 2022 WL 1788305, at *1. The Second Circuit explained that the “conclusory, boilerplate allegations” in the five “nearly identical complaints” failed to establish standing. *Id.* Calcano’s pleading in this case, the First Amended Complaint [ECF No. 15], is substantially identical to the complaints that the Second Circuit held failed to establish standing.

The Court has an independent “obligation . . . to inquire as to subject matter jurisdiction” and to dismiss *sua sponte* where the Court lacks such jurisdiction. *See Da Silva v. Kinsho Int’l Corp.*, 229 F.3d 358, 361–62 (2d Cir. 2000). Accordingly, IT IS HEREBY ORDERED that this case is DISMISSED without prejudice for lack of standing. Calcano may file a second amended complaint within fifteen days. If she does not timely file a second amended complaint, this case will be dismissed with prejudice.

SO ORDERED

Dated: June 7, 2022
New York, New York



MARY KAY VYSKOCIL
UNITED STATES DISTRICT JUDGE